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BY FACSIMILE, EMAIL AND U.S. POST

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Christopher Calfee, Special Counsel
Attn: CEQA Guidelines
California Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

**Re: Comments of NCRA on OPR's Revised Proposed Amendments to the CEQA
Guidelines to Address Greenhouse Gas Emissions**

Dear Mr. Calfee:

On behalf of the North Coast Rivers Alliance (NCRA), a conservation organization engaged in public education and advocacy to protect California's north coast rivers and their watersheds from environmentally harmful development, resource extraction and land use management, we offer the following comments on the Office of Planning and Research's (OPR's) Proposed Revised CEQA Guideline Amendments for Greenhouse Gas Emissions.

NCRA also submitted comments on the initial proposed CEQA Guideline Amendments by letter dated August 27, 2009 during the initial comment period. Those comments are incorporated by reference.

1. Introduction

In our first comment letter, we noted substantial weaknesses in the proposed amendments' ability to effectively address and remedy excessive GHG emissions. The amendments conferred overly lenient agency discretion in determining (1) significance thresholds, (2) mandatory findings of significance, (3) statements of overriding considerations, (4) baseline conditions, (5) mitigation, (6) cumulative impacts, and (7) tiering. The proposed

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revisions to these amendments do little to remedy these inadequacies, as explained below.

2. Methods of Determining Significance of GHG Emissions Should be Established in the Guidelines.

The revisions to the amendments appear to recognize that the proposed amendments leave agencies with too much discretion in deciding whether to perform a quantitative or qualitative analysis in determining the significance of a project's GHG emissions. The proposed amendments were therefore revised to provide that lead agencies should base their GHG analysis "to the extent possible on scientific and factual data." § 15064.4(a).

This is an improvement, but this Guideline still affords an agency too much discretion in determining significance because it fails to provide any specific guidance or methodology for determining significance.

Further, a significance determination should *always* be based on scientific and factual information. Language stating that these determinations should be based on scientific and factual data only "to the extent possible" is therefore confusing, and provides a potential loophole by which an agency might shirk its duty to determine significance based only on science and fact.

Section (b) of Guideline section 15064.4 was also revised to state that an agency "should" consider several factors when determining significance of GHG emissions, including how the emissions compare with the environmental baseline, whether they exceed a threshold of significance, and the emissions' consistency with state, regional, and local plans. The prior proposed amendment only stated that an agency "may" consider these factors.

While the "should" language is an improvement, there is no reason why these factors cannot be made mandatory through insertion of the imperative "shall." Comparison of emissions with an environmental baseline and with a threshold of significance, and evaluations of the emissions' consistency with state, regional, and local plans, is how a significance determination is reached under CEQA. There is no reason to afford an agency discretion in whether to consider these factors; these considerations should be a mandatory step in reaching a significance determination.

3. Guidelines Should Clarify that Localized Impacts of GHG Emissions Need be Considered in a Statement of Overriding Considerations.

The revised amendments state that regional and state-wide benefits may be considered in comparison with adverse impacts when developing a statement of overriding considerations.

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§ 15093(a). They should also clarify that GHG emissions may have localized as well as regional and global environmental impacts. For instance, GHGs can exacerbate localized air pollutant levels.¹ These localized impacts must also be considered and weighed in a statement of overriding considerations.

4. The Proposed Guidelines Should Strengthen Mitigation Requirements.

The revised amendments appropriately clarify that mitigation measures need be “supported by substantial evidence and subject to monitoring or reporting. . . .” § 15126.4(c). However, we repeat our earlier concerns that the proposed amendments should identify *required* mitigation measures that reduce energy use and GHG emissions.

5. The Proposed Guidelines Should Strengthen Requirements for Cumulative Impacts Analysis.

The revised amendments deleted a provision directing that “[a]n EIR shall analyze greenhouse gas emissions resulting from a proposed project when the incremental contribution of those emissions may be cumulatively considerable.” § 15130(f). The Comment Period Notice states that this deletion was made because this provision “merely restates the law.” While this is true, the purpose of this provision is to *clarify* the law, and thus, it should remain in the proposed amendments.

Cumulative impacts from GHG emissions, and the significance thereof, are often incorrectly analyzed because agencies merely restate the analysis of a project’s individual GHG impacts, concluding that because they are not individually significant, cumulative impacts will as well be less than significant. Section 15130(f)’s proposed language serves to clarify that a project may have an individually insignificant impact on GHG emissions, but still have a cumulatively significant impact.

6. Conclusion

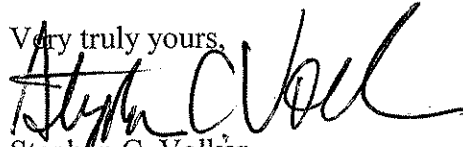
In conclusion, the revisions to the proposed amendments fail to remedy many of the deficiencies outlined in our first comment letter. Consequently, the proposed amendments fail to fully uphold the purpose and intent of CEQA, and fail to make a meaningful contribution to reduction of greenhouse gases. We urge you to rectify these failings.

¹ See Assessment of the Impacts of Global Change on Regional U.S. Air Quality: A Synthesis of Climate Change Impacts on Ground-Level Ozone, Environmental Protection Agency Global Change Research Program Report (April 2009). Available at: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=203459>

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Thank you for considering our comments on this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Stephan C. Volker', written over the typed name.

Stephan C. Volker
Attorney for North Coast Rivers Alliance